MILLER *v.* WILSON, SHERIFF OF RIVERSIDE COUNTY, STATE OF CALIFORNIA.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 112. Argued January 12, 1915.—Decided February 23, 1915.

The liberty of contract guaranteed by the due process clause of the Fourteenth Amendment is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest.

In determining the constitutionality of a state police statute the question is whether its restrictions have reasonable relation to a proper purpose; and reasonable regulations limiting the hours of labor of women are within the scope of legislative action. *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Hawley* v. *Walker*, 232 U. S. 718.

While the limitation of the hours of labor of women may be pushed to an indefensible extreme, the limit of reasonable exertion of the protective authority of the State is not overstepped and liberty of contract unduly abridged by a statute prescribing eight hours a day or a maximum of forty-eight hours a week.

The legislature of a State is not debarred from classifying according to

general considerations and with regard to prevailing conditions otherwise there could be no legislative power to classify.

The legislature is free to recognize degrees of harm and may confine it restrictions to those classes where it deems the need is greatest, and if the law hits an evil where it is most felt the prohibition need not b all embracing. *Keokee Coke Co.* v. *Taylor*, 234 U. S. 227.

The statute of California of 1911 prohibiting the employment of women in certain businesses including hotels is not unconstitutional as t women employed in hotels, either as an unwarranted invasion o liberty of contract or as denying the equal protection of the law o the ground of unreasonable discrimination because of the omission of certain classes of female laborers from its operation, or becaus the classification is based on the employé's business and not upo the character of the employé's work.

162 California, 687, affirmed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the Women's Eight Hour Labor Law of California, are stated in the opinion.

Mr. Frank P. Flint and *Mr. Henry S. Van Dyke* for plaintiff in error, submitted:

The restrictions imposed by the Act upon women and their employers as to their freedom of contract in certain designated employments are not reasonably necessary, and are not such a necessary invasion of freedom of contract as will be justified under the sanction of the police power or of any other constitutional power.

The legislation is not necessary to safeguard the health of any considerable class nor is it justified by the needs of the community as a whole. As in *Ritchie* v. *Wyman*, 214 Illinois, 509, the police power's exercise must be reasonable and not confiscatory, like a war power, and must be absolutely necessary to the public health or safety. Bierly's Police Power, p. 13; *People* v. *Commonwealth*, 9 Michigan, 285; *Smiley* v. *McDonald*, 42 Nebraska, 5; *Railroad Co.* v. *State*, 47 Nebraska, 549; Russell's Police Powers, p. 34.

And see *Lawton* v. *Steele*, 152 U. S. 133; Brannon's Fourteenth Amendment, pp. 172, 202.

The limitation to eight hours a day and particularly the limitation to forty-eight hours a week is unnecessary and unreasonable as applied to hotels and many of the other enumerated employments. To hold such legislation unconstitutional is to promote humanitarian legislation for women, for it makes possible such humanitarian legislation as is consistent with their liberty and their means of livelihood; while, on the contrary, the present law, as to many employments, by an unnecessary curtailment of their usefulness, and therefore of their earning capacity, does more harm than good. *Lochner* v. *New York*, 198 U. S. 45, 61; *Ex parte Kuback*, 85 California, 274.

There is nothing in the ordinary labor, by men of full age for more than eight hours a day, that calls for prohibition in the interest of the public health, the public safety, the public morals, or the public welfare. *Lochner* v. *New York*, *supra*.

This doctrine is affirmed by every court in the union having occasion to pass upon the question, except in certain cases on the women's employment acts which are bad on principle and on precedent. *Seattle* v. *Smyth*, 22 Washington, 327; *In re Morgan*, 26 Colorado, 415.

Only when an occupation possesses such characteristics of danger to health of those engaged therein as to justify the legislature in concluding that the welfare of the community demands a restriction, can the hours of labor for men be limited by legislative enactment. *Re Martin*, 157 California, 51, 55.

For the history of legislation and adjudication in this country on limitation of hours of employment for women, see *Commonwealth* v. *Hamilton Mfg. Co.*, 120 Massachusetts, 383; *Holden* v. *Hardy*, 169 U. S. 366; *Commonwealth* v. *Beatty*, 15 Pa. Sup. Ct. 5; *Wenham* v. *State*, 65 Nebraska, 395; *State* v. *Buchanan*, 29 Washington, 604;

Muller v. *Oregon*, 208 U. S. 412; *Commonwealth* v. *Riley*, 97 N. E. Rep. 367; *State* v. *Somerville*, 122 Pac. Rep. 324; *People* v. *Elerding*, 98 N. E. Rep. 982; *People* v. *Chicago*, 100 N. E. Rep. 194; *State* v. *Newman Lumber Co.*, 59 So. Rep. 923; *Matter of Jacobs*, 98 N. Y. 98; *People* v. *Williams*, 189 N. Y. 131; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127; *Burcher* v. *People*, 41 Colorado, 495.

The Act is vitiated by manifold and fatal discriminations, and is therefore unconstitutional.

The first and most obvious discrimination is the express exception of all women employed in harvesting fruit or vegetables. Several considerable classes of women employés, whose employments are in no wise distinguishable in any particulars from many of those included,—e. g., stenographers, clerks and assistants employed by the professional classes and all domestic servants, are totally omitted. *Cotting* v. *Godard*, 183 U. S. 79; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540.

The freedom to contract is protected from unreasonable restriction, similarly with every other proper freedom, by the Fourteenth Amendment. *Allgeyer* v. *Louisiana*, 165 U. S. 578–589; *State* v. *Peel Splint Coal Co.*, 36 W. Va. 856; *State* v. *Goodwill*, 33 W. Va. 179; *Barbier* v. *Connolly*, 113 U. S. 27; *Gulf &c. Ry.* v. *Ellis*, 165 U. S. 150; *Bell's Gap R. R.* v. *Pennsylvania*, 134 U. S. 237; *Low* v. *Rees Printing Co.* (Neb.), 59 N. W. Rep. 362; *Dougherty* v. *Austin*, 94 California, 620; *Darcy* v. *San Jose*, 104 California, 642; *Lodi* v. *State*, 51 N. J. L. 402; *Hellman* v. *Shoulters*, 114 California, 147; *Budd* v. *Hancock*, 66 N. J. L. 135; *Ex parte Sohncke*, 148 California, 262, 267.

Statutes have been held unconstitutional as violating the constitutional inhibitions against special laws, the classification being held arbitrary and without reasonable basis in *Slocum* v. *Bear Valley Co.*, 122 California, 555; *Johnson* v. *Goodyear Mining Co.*, 127 California, 417; *Krause* v. *Durbrow*, 127 California, 681, 685; *Beveridge* v.

Lewis, 137 California, 619, 623; *Ex parte Sohncke*, 148 California, 262; *Ex parte Westerfield*, 55 California, 550, 552, 553.

As to the discrimination between hotels and boarding houses and as to what constitutes an inn or hotel see *Pinkerton* v. *Woodward*, 33 California, 557; *Fay* v. *Pacific Improvement Co.*, 93 California, 253, 259; Schouler on Bailments, 253; *Cromwell* v. *Stephens* (N. Y.), 2 Daly, 15, 17, 23; *Kelly* v. *Excise Comr's*, 54 How. Prac. 327; *Martin* v. *State Ins. Co.*, 44 N. J. Law, 495; 22 Cyc. 1070; 16 Am. and Eng. Ency. of Law, 510; Beale on Innkeepers and Hotels, pp. 24–25, etc.; *Ex parte Jentzsch*, 112 California, 468, 474.

Mr. William Denman and *Mr. Louis D. Brandeis*, with whom *Mr. U. S. Webb*, Attorney General of the State of California, and *Mr. G. S. Arnold* were on the brief, for defendant in error:

California has the power to prevent the gainful employment of women for over eight hours a day in hotels and hospitals, and such a restriction is not an unconstitutional denial of freedom of contract.

The limitation of the number of hours women must work in these two employments has a direct relationship to women's health, and hence to the health of the race as a whole, as well as the safety and health of those she serves.

Women are admittedly weaker than men in the struggle of economic competition and may be protected by legislative enactment against the oppressive bargaining or control of their employer, whether arising from cupidity or such a mistaken philanthropy as that of the hospital here, which admittedly works its undergraduate girl nurses the equivalent of twelve hours a day for a six day week to make a better showing of the number of poor people cared for.

The limitation of the number of hours of woman's labor in gainful occupations to not over a half of her waking time

may check the rapid decline in reproduction of the older American stocks and in any event leaves her free for the development of mind and body for wifehood and motherhood, and hence insures the increased intelligence and strengthening of the race through the mother, to whom primarily (in California at least) the shaping of the child mind, the directing of his habits and the development of his character is primarily entrusted.

The California statutes in question do not deny equal protection of the law.

The continuous work of women in hotels and hospitals differs essentially from the intermittent seasonal work of women in harvesting, curing, canning or drying of any variety of perishable fruit or vegetables.

There is an essential difference between the work of women in hotels and in lodging houses.

The graduate nurse belongs to a class composed of women mentally better educated, physically better trained, professionally more experienced, and economically better organized to resist oppressive regulation imposed by their employers, and hence may be left free from legislative restriction in the performance of her distinctive functions in the hospital. She is the best fitted to cope with those emergencies arising in the operating room and ward, which often require attendance for more than the eight hour period and hence excepting her from the law provides for such emergencies.

In support of these contentions see *Adams* v. *Milwaukee*, 228 U. S. 572; *Barrett* v. *Indiana*, 229 U. S. 26; Bureau of Education Bulletin, 1912, No. 7.

Boarding houses are excluded from statutes regulating hotels in Delaware, Illinois, Michigan, Maryland, New Jersey, Oregon, Pennsylvania, Utah, Virginia, Washington. See *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Colting* v. *Kansas*, 183 U. S. 79; *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535; *Hawley* v. *Walker*, 232 U. S. 718; *Holden* v.

Hardy, 169 U. S. 366; *Lindsley* v. *Nat. Gas Co.*, 220 U. S. 76; *McLean* v. *Arkansas*, 211 U. S. 539; *Ex parte Miller*, 162 California, 687; *Muller* v. *Oregon*, 208 U. S. 412; *Patsone* v. *Pennsylvania*, 232 U. S. 138; *People* v. *Elerding*, 254 Illinois, 579; *Quong Wing* v. *Kirkendall*, 223 U. S. 59; *Riley* v. *Massachusetts*, 232 U. S. 671; *Smith* v. *Texas*, 233 U. S. 630; *Wenham* v. *State*, 65 Nebraska, 395.

MR. JUSTICE HUGHES delivered the opinion of the court.

The plaintiff in error, the proprietor of the Glenwood Hotel in the City of Riverside, California, was arrested upon the charge of employing and requiring a woman to work in the hotel for the period of nine hours in a day, contrary to the statute of California which forbade such employment for more than eight hours a day or forty-eight hours a week. Act of March 22, 1911; Stats. 1911, p. 437. It was stated in the argument at this bar that the woman was employed as a chambermaid. Urging that the act was in violation of the state constitution, and also that it was repugnant to the Fourteenth Amendment as an arbitrary invasion of liberty of contract and as unreasonably discriminatory, the plaintiff in error obtained a writ of *habeas corpus* from the Supreme Court of the State. That court, characterizing the statute as one 'intended for a police regulation to preserve, protect, or promote the general health and welfare,' upheld its validity and remanded the plaintiff in error to custody. 162 California, 687. This writ of error was then sued out.

The material portion of the statute, as it then stood, was as follows:

"No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or

more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; *provided, however,* that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable."

As the liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest—the question is whether the restrictions of the statute have reasonable relation to a proper purpose. *Chicago, Burlington & Quincy R. R.* v. *McGuire,* 219 U. S. 549, 567; *Erie R. R.* v. *Williams,* 233 U. S. 685, 699; *Coppage* v. *Kansas, ante,* pp. 1, 18. Upon this point, the recent decisions of this Court upholding other statutes limiting the hours of labor of women must be regarded as decisive. In *Muller* v. *Oregon,* 208 U. S. 412, the statute of that State, providing that 'no female shall be employed in any mechanical establishment, or factory, or laundry' for 'more than ten hours during any one day,' was sustained as applied to the work of an adult woman in a laundry. The decision was based upon considerations relating to woman's physical structure, her maternal functions, and the vital importance of her protection in order to preserve the strength and vigor of the race. 'She is properly placed in a class by herself,' said the court, p. 422, 'and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. . . . Even though all restrictions on political, personal and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to

him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence.' In *Riley* v. *Massachusetts*, 232 U. S. 671, the plaintiff in error had been convicted upon the charge of employing a woman in a factory at a different hour from that specified in a notice posted in accordance with the statute relating to the hours of labor. The general provision of the statute being found to be valid, the particular requirements which were the subject of special objection were also upheld as administrative rules designed to prevent the circumvention of the purpose of the law. The case of *Hawley* v. *Walker*, 232 U. S. 718, arose under the Ohio act prohibiting the employment of 'females over eighteen years of age' to work in 'any factory, workshop, telephone or telegraph office, millinery, or dressmaking establishment, restaurant or in the distributing or transmission of messages more than ten hours in any one day, or more than fifty-four hours in any one week.' The plaintiff in error was charged with employing a woman in a millinery establishment for fifty-five hours in a week. The constitutionality of the law as thus applied was sustained by this court.

It is manifestly impossible to say that the mere fact that the statute of California provides for an eight hour day, or a maximum of forty-eight hours a week, instead of ten hours a day or fifty-four hours a week, takes the case out of the domain of legislative discretion. This is not to imply that a limitation of the hours of labor of women might not be pushed to a wholly indefensible extreme, but there is no ground for the conclusion here that the limit of the reasonable exertion of protective authority has been overstepped. Nor, with respect to liberty of contract, are we able to perceive any reason upon which the State's power thus to limit hours may be upheld with respect to women in a millinery establishment and denied as to a chambermaid in a hotel.

We are thus brought to the objections to the act which are urged upon the ground of unreasonable discrimination. These are (1) the exception of women employed in 'harvesting, curing, canning or drying of any variety of perishable fruit or vegetable;' (2) the omission of those employed in boarding houses, lodging houses, etc.; (3) the omission of several classes of women employés, as for example stenographers, clerks and assistants employed by the professional classes, and domestic servants; and (4) that the classification is based on the nature of the employer's business and not upon the character of the employé's work.

With respect to the last of these objections, it is sufficient to say that the character of the work may largely depend upon the nature and incidents of the business in connection with which the work is done. The legislature is not debarred from classifying according to general considerations and with regard to prevailing conditions; otherwise, there could be no legislative power to classify. For it is always possible by analysis to discover inequalities as to some persons or things embraced within any specified class. A classification based simply on a general description of work would almost certainly bring within the class

a host of individual instances exhibiting very wide differences; it is impossible to deny to the legislature the authority to take account of these differences and to do this according to practical groupings in which, while certain individual distinctions may still exist, the group selected will as a whole fairly present a class in itself. Frequently such groupings may be made with respect to the general nature of the business in which the work is performed; and, where a distinction based on the nature of the business is not an unreasonable one considered in its general application, the classification is not to be condemned. See *Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 53, 54. Hotels, as a class, are distinct establishments not only in their relative size but in the fact that they maintain a special organization to supply a distinct and exacting service. They are adapted to the needs of strangers and travelers who are served indiscriminately. As the state court pointed out, the women employés in hotels are for the most part chambermaids and waitresses; and it cannot be said that the conditions of work are identical with those which obtain in establishments of a different character, or that it was beyond the legislative power to recognize the differences that exist.

If the conclusion be reached, as we think it must be, that the legislature could properly include hotels in its classification, the question whether the act must be deemed to be invalid because of its omission of women employed in certain other lines of business is substantially the same as that presented in *Hawley* v. *Walker*, *supra*. There, the statute excepted 'canneries or establishments engaged in preparing for use perishable goods'; and it was asked in that case on behalf of the owner of a millinery establishment why the act should omit mercantile establishments and hotels. The contention as to the various omissions which are noted in the objections here urged ignores the well-established principle that the legislature is not bound,

in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. *Patsone* v. *Pennsylvania*, 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227. Upon this principle, which has had abundant illustration in the decisions cited below, it cannot be concluded that the failure to extend the act to other and distinct lines of business, having their own circumstances and conditions, or to domestic service, created an arbitrary discrimination as against the proprietors of hotels. *Ozan Lumber Co.* v. *Union County Bank*, 207 U. S. 251, 256; *Heath & Milligan* v. *Worst*, 207 U. S. 338, 354; *Engel* v. *O'Malley*, 219 U. S. 128, 138; *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78; *Mutual Loan Co.* v. *Martell*, 222 U. S. 225, 235; *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160; *Rosenthal* v. *New York*, 226 U. S. 260, 270; *Barrett* v. *Indiana*, 229 U. S. 26, 29; *Sturges & Burn* v. *Beauchamp*, 231 U. S. 320, 326; *German Alliance Insurance Co.* v. *Kansas*, 233 U. S. 389, 418; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 213; *Atlantic Coast Line R. R.* v. *Georgia*, 234 U. S. 280, 289.

For these reasons the judgment must be affirmed.

Judgment affirmed.

BOSLEY *v.* McLAUGHLIN, LABOR COMMISSIONER OF THE STATE OF CALIFORNIA.

SAME *v.* SAME.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Nos. 362, 363. Argued January 12, 1915.—Decided February 23, 1915.

The nature of the work of pharmacists and student nurses in hospitals and the importance to the public that it should not be performed by those overfatigued, make it a proper subject for legislative control as to hours of labor of women so employed.

Whether there is necessity for limiting the hours of labor of women pharmacists and nurses in hospitals is a matter for legislative and not judicial control, and the legislature is not prevented by the due process clause of the Fourteenth Amendment from limiting such labor to eight hours a day or a maximum of forty-eight hours a week. Such a restriction is not so palpably arbitrary as to be an unconstitutional invasion of the liberty of contract.

Miller v. *Wilson, ante*, p. 373, followed in regard to the right of the legislature to limit the hours of labor of women other than pharmacists and student nurses employed in hospitals in California.

An exception of graduate nurses from the operation of a statute limiting the hours of labor of women is not so arbitrary, either as to female pharmacists or student nurses in hospitals, as to make the statute unconstitutional as denying equal protection of the law. The distinction in their employment is one of which the legislature may take notice.

Enforcement of a state police statute will not be enjoined on the ground that it violates the equal protection provision of the Fourteenth Amendment where the bill fails to show as to the persons attacking the statute any such injury, actual or threatened, as warrants resort to a court of equity.

The California Statute of 1911 as amended in 1913 limiting the hours of labor of women in certain employments including those in hospitals to eight hours in any one day or a maximum of forty-eight hours a week is not unconstitutional under the Fourteenth Amendment either as unduly abridging the liberty of contract, or as denying equal protection of the law because graduate nurses were excepted therefrom.

THE facts, which involve the constitutionality under the Fourteenth Amendment of the California Women's Eight Hour Labor Law, are stated in the opinion.

Mr. John F. Bowie, with whom *Mr. Charles S. Wheeler* was on the brief, for appellants:

The provision of the statute excepting graduate nurses from the operation of the law results in denying equal protection of the laws to all other women working in hospitals.

The fact that a law may be passed in exercise of the police power does not obviate the requirement of equal protection.

Equal protection of the laws requires that no impediment be interposed to the pursuits of one except as applied to the pursuits of others under like circumstances.

Appellants offered to prove as a fact that the statute imposed on women following the same pursuits as those followed by graduate nurses impediments not imposed on graduate nurses: that no difference existed justifying this discrimination.

The pursuits followed by graduate nurses in hospitals are the same as those followed by other women in hospitals and there is no difference in theory or past experience justifying the discrimination.

The statute will if enforced operate to deprive appellants of liberty without due process of law.

The act under consideration is not a health law.

Laws limiting hours of labor of adults operate to deprive those subject thereto of liberty.

Liberty includes freedom to work at a lawful calling.

Women are not wards of the State.

The statute operates to deprive appellants of liberty without due process of law.

The statute is invalid even if viewed as an exercise of

police power as the restrictions imposed are arbitrary and unnecessarily oppressive.

In support of these contentions see *Addyston Co.* v. *United States*, 175 U. S. 211; *Allgeyer* v. *Louisiana*, 165 U. S. 578; *Attorney General* v. *Sillem*, 33 L. J. Ex. 92; *Chicago, B. & Q.* v. *McGuire*, 219 U. S. 549; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Cotting* v. *Kansas*, 183 U. S. 79; *Ex parte Drayton*, 153 Fed. Rep. 986; *Dyke* v. *Elliott*, L. R. 4 P. C. 184; *Erie R. R.* v. *Williams*, 233 U. S. 685; *Eubank* v. *Richmond*, 226 U. S. 137; *German Alliance Ins. Co.* v. *Kansas*, 233 U. S. 389; *Gulf, Col. & Santa Fe R. R.* v. *Ellis*, 165 U. S. 150; *Ex parte Jentzsch*, 112 California, 468; *Lawton* v. *Steele*, 152 U. S. 133; *Lochner* v. *New York*, 198 U. S. 45; *Low* v. *Rees Printing Co.*, 41 Nebraska, 127; *Minnesota* v. *Barber*, 136 U. S. 313; *Mugler* v. *Kansas*, 123 U. S. 623; *Muller* v. *Oregon*, 208 U. S. 412; *Opinion of Justices*, 208 Massachusetts, 622; *People* v. *Elerding*, 254 Illinois, 579; *People* v. *Williams*, 189 N. Y. 131; *Ritchie* v. *People*, 155 Illinois, 98; *In re Sing Tuck*, 126 Fed. Rep. 386; *Smith* v. *Alabama*, 124 U. S. 465; *Smith* v. *Texas*, 233 U. S. 630; *Soon Hing* v. *Crowley*, 113 U. S. 703; *State ex rel. Galle* v. *New Orleans*, 113 Louisiana, 371; *United States* v. *Ragsdale*, Hempst. 479; *United States* v. *Wiltberger*, 5 Wheaton, 76; Statutes of California, 1913, p. 713.

Mr. William Denman and *Mr. Louis D. Brandeis*, with whom *Mr. G. S. Arnold* were on the brief, for appellees:

Eight-hour laws for women are valid.

Statutes have been passed for women's eight-hour laws in private businesses.

There are eight-hour laws for men and women in certain private businesses,—in mines, smelters, ore reduction, and in miscellaneous private businesses.

There are eight-hour laws for men and women telegraphers and telephone operators in railroad service; for

men and women in work done in private business for national, state or municipal governments and public employments.

The classifications made in Cal. Stat. 1911, chaps. 238 and 324, are not arbitrary.

There are recognized evils of employing pupil nurses, while still in training, to perform the duties of graduate nurses.

There was common knowledge and widespread discussion of the exemption of Graduate Nurses before the California Act of 1913 was passed.

There was general condemnation of the practice of many hospitals in employing pupil nurses instead of graduate nurses for the sake of financial gain.

The common practice in the best hospitals is to sharply differentiate between graduate and pupil nurses as to capacities, functions and duties.

There is an acknowledged power of associated graduate nurses to improve standards in their profession.

The reasonableness of the eight-hour day for pupil nurses is apparent as is also the reasonableness of not exempting "experienced" nurses from the scope of the act and including pharmacists within the scope of the act.

The act does not apply to women internes acting as physicians and surgeons.

In support of these contentions see *Ex parte Hawley*, 98 N. E. Rep. 1126; *Hawley* v. *Walker*, 232 U. S. 718; *Muller* v. *Oregon*, 208 U. S. 412; *People* v. *Elerding*, 98 N. E. Rep. 982; *State* v. *Somerville*, 122 Pac. Rep. 324; *Withey* v. *Bloem*, 128 N. W. Rep. 913.

MR. JUSTICE HUGHES delivered the opinion of the court.

This is a suit to restrain the enforcement of the statute of California prohibiting the employment of women for more than eight hours in any one day or more than forty-

eight hours in any one week. The act is the same as that which was under consideration in *Miller* v. *Wilson*, *ante*, p. 373, decided this day, as amended in 1913. By the amendment, the statute was extended to public lodging houses, apartment houses, hospitals, and places of amusement. The proviso was also amended so as to make the statute inapplicable to 'graduate nurses in hospitals.' Stats. (Cal.) 1913, p. 713.

The complainants are the trustees of 'The Samuel Merritt Hospital' in Alameda, California, and one of their employés, Ethel E. Nelson. Their bill set forth that there were employed in this hospital approximately eighty women and eighteen men; that of these women ten were what are known as 'graduate nurses,' that is to say, those who had 'pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured,' and had received diplomas or certificates of graduation. By reason of their qualifications, they were paid 'a compensation greatly in excess of that paid to female pupils engaged in nursing in hospitals while students of the training school.'

It was further averred that, in addition to these ten graduate nurses, certain other women were employed in the hospital, one as bookkeeper, two as office assistants, one as seamstress, one as matron or housekeeper, five who were engaged in ordinary household duties, and one—the complainant Ethel E. Nelson—as pharmacist. It was stated that this complainant was a graduate pharmacist, licensed by the state board; that she also acted as storekeeper, but that her chief duty was to mix and compound drugs for use in the treatment of the hospital patients. The general allegation was made that these last-mentioned eleven employés performed work that was in no manner different from that done by 'persons engaged in similar employments or occupations and not

employed in hospitals.' The apprehended injury to the complainant Nelson by reason of the interference of the statute with her freedom to contract was specially alleged.

It was also set forth that the hospital maintained a school with a three years' course of study wherein women were trained to nurse the sick and injured; that in this school there were enrolled twenty-four in the third year class, eighteen in the second year class, and twenty-three in the first year class; that a part of the 'education and training' of these 'student nurses' consisted in 'aiding, nursing, and attending to the wants of the sick and injured persons' in the hospital, this work being done while the student was pursuing the prescribed course of study; that the student nurses were paid $10 a month during each of the first two years of their course and $12.50 a month in the third year, and were also provided throughout the three years 'with free board, lodging and laundry.' It was averred that the cost to the hospital of maintaining the school was $2,500 a month, and that the cost of procuring the work to be performed by graduate nurses that was being done by student nurses would be not less than $3,600 a month. It was set forth as a reason why the work of the student nurses was done at less expense, that their compensation was paid not only in money, board, etc., but also partially in their education and training, their attendance on patients being in itself an indispensable part of their course of preparation. It was said further that their hours of labor must be determined by the exigencies of the cases they were attending.

The enforcement of the act with respect to these student nurses, it was stated, would require the hospital either to cease the operation of the school or largely to increase the number in attendance in order that an equal return in service could be obtained; and such increase would involve a greatly enlarged expense.

The complainants attacked the act on the grounds

that it interfered with their liberty of contract and denied to them the equal protection of the laws, contrary to the Fourteenth Amendment. And in support, it was asserted in substance, that labor in hospitals did not afford, in itself, a basis for classification; that there was no difference between such labor and the 'same kind of labor' performed elsewhere; that a hospital is not an unhealthful or unsanitary place; and, generally, that the statute and its distinctions were arbitrary.

Upon the bill, an application was made for an injunction pending the suit. It was heard by three judges and was denied. The appeal in No. 362 is from the order thereupon entered.

The defendants, the officers charged with the enforcement of the law, filed an answer. On final hearing, the complainants made an offer to prove that "all the allegations of fact set forth in the bill were true; that the fact that a woman was a graduate nurse merely showed that she had completed a course of study for the treatment of the sick, but that the course of study which a woman must take for that purpose was not prescribed by law or fixed by custom, but was such as any hospital or training school might, in the discretion of its governing officers see fit to prescribe; that the difference between a graduate nurse and an experienced nurse is a difference of technical education only, and that there is no standard by which this difference can be measured; that graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff." The District Judge thereupon stated that upon the hearing of the motion for an interlocutory injunction it had been held that the complaint did not state a cause of action and that it was considered unnecessary to take the evidence. The offer of proof was rejected and the bill of complaint dismissed. No. 363 is an appeal from the final decree.

1. *As to liberty of contract.* The gravamen of the bill is with respect to the complainant Nelson, a graduate pharmacist, and the student nurses. As to the former,—it appears that a statute of California limits the hours of labor of pharmacists to ten hours a day and sixty hours a week. Stats. (Cal.) 1905, p. 28. In view of the nature of their work, and the extreme importance to the public that it should not be performed by those who are suffering from over-fatigue, there can be no doubt as to the legislative power reasonably to limit the hours of labor in that occupation. This, the appellants expressly concede. But this being admitted to be obviously within the authority of the legislature, there is no ground for asserting that the right to contractual freedom precludes the legislature from prohibiting women pharmacists from working for more than eight hours a day in hospitals. The mere question whether in such case a practical exigency exists, that is, whether such a requirement is expedient, must be regarded as a matter for legislative, not judicial, consideration.

The appellants, in argument, suggest a doubt whether the statute is applicable to the student nurses, but the bill clearly raises the question of its validity as thus applied and urges the serious injury which its enforcement would entail upon the hospital. Assuming that these nurses are included, the case presented would seem to be decisive in favor of the law. For it appears that these persons, upon whom rests the burden of immediate attendance upon, and nursing of, the patients in the hospital are also pupils engaged in a course of study, and the propriety of legislative protection of women undergoing such a discipline is not open to question. Considerations which, it may be assumed, moved the legislature to action have been the subject of general discussion as is shown by the bulletin issued by the United States Bureau of Education on the 'Educational Status of Nursing' (Bulletin,

1912, No. 7). With respect to the 'hours of duty' for student nurses, it is there said (pp. 29-32): "These long hours have always formed a persistent and at times an apparently immovable obstacle in efforts to improve the education of nurses and to establish a rational adjustment of practice to theory. . . . Ten or more hours a day in addition to class work and study might be endured for a period of two years without obvious or immediate injury to health. The same hours carried on for three years would prove a serious strain upon the student's physical resources, inflicting perhaps irreparable injury. The conclusions reached in this first study of working hours of students (1896) were that they were universally excessive, that their requirement reacted injuriously not only upon the students, but eventually upon the patients and the hospital, that it was a short-sighted and unjustifiable economy in hospital administration which permitted it to exist. Fifteen years later, statistics show that though the course of training has now in the great majority of schools been lengthened to three years, shorter hours of work have not generally accompanied this change, and that progress in that direction has been slow and unsatisfactory." After quoting statistics the bulletin continues: "In speaking of hours it must be remembered that these statistics refer only to practical work in ward, clinic, operating room, or other hospital department, and not to any portion of theoretical work; that the 10 hours in question are required of the student irrespective of lectures, class, or study. This practical work, also, is in many of its aspects unusually exacting and fatiguing; much of it is done while standing, bending, or lifting; much of it is done under pressure of time and nervous tension, and to a considerable degree the physical effort which the student must make is accompanied by mental anxiety and definite, often grave, responsibility. Viewed from any standpoint whatever, real nursing is difficult,

exacting work, done under abnormal conditions, and all the extraordinary, subtile, intangible rewards and satisfactions which are bound up in it for the worker cannot alter that fact.—Ten hours, or even nine hours, of work daily of this nature cannot satisfactorily be combined with theoretical instruction to form a workable educational scheme.— . . . How largely the superintendents of training schools feel the need of improvement in this direction may be gathered from the fact that over two-thirds of the replies to the questions on this subject suggested shorter hours as advisable or necessary, that a large proportion of these stated their firm belief in an 8-hour day, and that almost every reply which came showed clearly in one way or another the difficulties under which the schools were laboring in trying to carry on the hospital work with the existing number of students."

Whatever contest there may be as to any of the points of view thus suggested, there is plainly no ground for saying that a restriction of the hours of labor of student nurses is palpably arbitrary.

As to certain other women (ten in number) employed in the hospital, such as the matron, seamstress, bookkeeper, two office assistants and five persons engaged in so-called household work, the bill contains merely this general description without further specifications; and from any point of view it is clear, that, with respect to the question of freedom of contract, no facts are alleged which are sufficient to take the case out of the rulings in *Muller* v. *Oregon*, 208 U. S. 412; *Riley* v. *Massachusetts*, 232 U. S. 671; *Hawley* v. *Walker*, 232 U. S. 718; and *Miller* v. *Wilson*, *ante*, p. 373.

2. *As to the equal protection of the laws.* The argument in this aspect of the case is especially addressed to the exception of 'graduate nurses.' The contention is that they are placed 'on one side of the line and doctors, surgeons, pharmacists, experienced nurses and student nurses

and all other hospital employés on the other side of the line.' So far as women doctors and surgeons are concerned, the question is merely an abstract one as no such question is presented by the allegations of the bill with regard to the complainant hospital. (*Southern Railway v. King*, 217 U. S. 524, 534; *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550.) With regard to other nurses, whether so-called 'experienced' nurses or student nurses, it sufficiently appears that the graduate nurse is in a separate class. The allegations of the bill itself show this to be the fact. It is averred that the graduate nurses are those who 'have pursued and completed, at some training school for nurses in a hospital, courses of study and training in the profession or occupation of nursing and attending the sick and injured, and have received, in recognition thereof, diplomas or certificates of graduation from said courses of study.' And, in the appellants' offer of proof, it is said that 'graduate nurses working in and employed by hospitals do not ordinarily perform therein the work of nursing the sick, but act as overseers to assistants to the medical staff.' It may be, as asserted, that the difference in qualifications between a graduate nurse and an 'experienced nurse' is a difference of technical education only, but that difference exists and is not to be brushed aside. It is one of which the legislature could take cognizance. Not only so, but as such nurses act as overseers of wards or assistants to surgeons and physicians, it would be manifestly proper for the legislature to recognize an exigency with respect to their employment making it advisable to take them out of the general prohibition. Again, with regard to the complainant Nelson, who is a graduate pharmacist, while she has been graduated from a course of training for her chosen vocation, it is a different vocation. The work is not the same. There is no relation to the supervision of the wards, and, putting mere matters of expediency aside, there is no basis for concluding that

the legislature was without power to treat the difference as a ground for classification.

As to the ten other women employés, the validity of the distinction made in the case of graduate nurses is obvious. It should further be said, aside from the propriety of classification of women in hospitals with respect to the general conditions there obtaining (*Louisville & Nashville R. R.* v. *Melton*, 218 U. S. 36, 53, 54), that the bill wholly fails to show as to the employment of any of these persons any such injury—actual or threatened—as would warrant resort to a court of equity to enjoin the enforcement of the law.

And the objection based upon the failure of the legislature to extend the prohibition of the statute to persons employed in other establishments is not to be distinguished in principle from that which was considered in *Miller* v. *Wilson*, *supra*, and cases there cited.

Decrees affirmed.